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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,564	04/19/2004	Richard Thiele JR.	THL-10002/29	3187

25006 7590 02/26/2007
GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C
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EXAMINER

OKEZIE, ESTHER O

ART UNIT	PAPER NUMBER
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3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/827,564	THIELE, RICHARD	
	Examiner	Art Unit	
	Esther O. Okezie	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

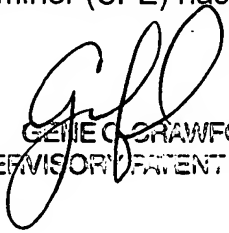
In view of the appeal brief filed on November 15, 2006, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


G. E. CRAWFORD
SUPERVISORY PATENT EXAMINER

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-12 recite the limitation "The improved shovel of claim 1" while claim 1 recites the limitation "An improved blade for a shovel". There is insufficient antecedent basis for this limitation in the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,6,7, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Wright US 2,932,103. Wright discloses a shovel having an elongated handle (52) comprising a scoop portion (11) having a width, a length, and a leading edge ("forward edge 18") furtherest away from the handle; a plurality of concave scallops on the leading edge, and each scallop defining a segment of a circle ("The shovel 11 is shown with a serrated and scalloped forward edge 18..." col. 2, lines 15-17); and wherein the segments intersect at distinct forward points in a straight line generally perpendicular to the handle (see Figures 1-3, and 5, forward edge 18 terminates at a distinct forward point); wherein the scallops are substantially identical (figs 1 and 2); the scoop portion

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of the tool is configured for conventional use and can be operably used for snow shoveling, ice scraping, and gardening; and the leading edge is attached to the scoop portion (figs 1-3).

Note: the definition of a scallop according to Merriam-Webster Dictionary Online: "one of a continuous series of circle segments or angular projections forming a border (as on cloth or metal)"

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Dawley et al US D308,004 (see US 4,865,133 for Utility Patent). Dawley et al discloses a hoe having an elongated handle (11) comprising a scoop portion (18) having a width, a length, and a leading edge (21) furthestest away from the handle; a plurality of concave scallops on the leading edge, and each scallop defining a segment of a circle and wherein the segments intersect at distinct forward points in a straight line generally perpendicular to the handle; wherein the scallops are substantially identical.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson US 3,868,775 in view of Rockwell US 3,103,752. Anderson discloses a shovel having

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an elongated handle (14) comprising a scoop portion (16) having a width, a length, and a leading edge furthest away from the handle. While Anderson discloses a shovel with a detachable weed cutter blade having rounded sections on the leading edge generally perpendicular to the handle, however the sections do not define single circle segments that intersect at distinct forward points (see V-shaped recess 24). Rockwell discloses a cutting blades for an excavating shovel including detachable blades (32) with a plurality of concave scallops on the leading edge of the shovel; wherein each scallop ("scalloped edge 45") defines a segment of a circle and the segments intersect at distinct forward points in a straight line (see Figure 5). It would have been obvious to one of ordinary skill at the time of the invention to modify the cutting blade of Anderson with the scalloped blade of Rockwell in order to provide a blade that is "self-sharpening and as it wears the scalloped cutting edge is maintained" (see Rockwell col. 2, lines 25-35 and fig. 5 phantom line 47).

Claims 2-5,7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright US 2,932,103.

Re claim 2, Wright does not disclose the dimensions of the shovel, but between 3-12 scallops are disclosed. It would have been obvious to one of ordinary skill in the art at the time of the invention to design the tool dimensions based on the application of the tool.

Re claims 3-5, it appears Wright et al discloses the points are spaced apart by a distance that is substantially greater than the radius of the scallop and the radius of the

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scallop is greater than or equal to this distance (see fig 1). It would have been obvious to one of ordinary skill at the time of the invention to modify the size and spacing of the scallops, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum working ranges involves only routine skill in the art and a modification would have involved a mere change in size as a matter of design choice.

Re claims 7,9, and 10, Wright discloses the scoop portion of the tool is configured for conventional use and can be operably used for snow shoveling, ice scraping, and gardening. It would have been obvious to one of ordinary skill at the time of the invention to configure the scoop portion of a shovel for conventional domestic use in gardening, snow shoveling, and ice scraping as is well known in the art.

Claims 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright et al in view of Guo US 6,497,439.

Re claim 8, Wright does not disclose stiffening ribs in the scoop portion. Guo discloses stiffening ribs (see fig. 1). It would have been obvious to one of ordinary skill at the time of the invention to provide a shovel with stiffening ribs because ribs are well known in the art for increasing strength and reducing failure.

Re claim 12, Wright does not disclose the leading edge and the scoop portion constructed of dissimilar materials. Guo discloses a tool wherein the leading edge is constructed from steel and the scoop portion is constructed from aluminum or plastic. It would have been obvious to one of ordinary skill in the art to modify the tool of Wright to

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include a leading edge made of a dissimilar material than the scoop portion because the leading edge undergoes different stresses than the scoop portion, therefore materials of differing stress capacity could be used for greater tool longevity (see Guo; col. 2, lines 32-50).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EOO
2/19/07


G. E. CRAWFORD
SUPERVISORY PATENT EXAMINER